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Turnberry/MGM Grand Towers, LLC,

MGM Grand, Inc., Turnberry/Harmon

Ave, LLC, and Turnberry Associates

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

MARY ANN SUSSEX; MITCHELL PAE; )  
MALCOLM NICHOLL and SANDY )  
SCALISE; ERNESTO VALDEZ, SR. and )  
ERNESTO VALDEZ, JR; JOHN )  
HANSON and ELIZABETH HANSON, )

Case No:

NOTICE OF REMOVAL

Plaintiffs,

v.

TURNBERRY/MGM GRAND TOWERS, )  
LLC; MGM GRAND, INC., doing )  
business as MGM MIRAGE; )  
TURNBERRY/HARMON AVE., LLC; )  
TURNBERRY ASSOCIATES; and DOES )  
1 through 100, inclusive, )

Defendants.

1 TO: Mary Ann Sussex; Mitchell Pae; Malcolm Nicholl and Sandy Scalise;  
2 Ernesto Valdez, Sr and Ernesto Valdez, Jr.; John Hanson and  
Elizabeth Hanson, and

3 TO: Robert B. Gerard and Ricardo Ehmann of GERARD & ASSOCIATES,  
4 and Norman Blumenthal of BLUMENTHAL & NORDREHAUG,  
their attorneys.

5 PLEASE TAKE NOTICE that defendant Turnberry/MGM Grand  
6 Towers, LLC ("Turnberry/MGM") hereby removes the state action entitled "Mary  
7 Ann Sussex; Mitchell Pae; Malcolm Nicholl and Sandy Scalise; Ernesto Valdez, Sr  
8 and Ernesto Valdez, Jr.; John Hanson and Elizabeth Hanson v. Turnberry/MGM  
9 Grand Towers, LLC; MGM Grand, Inc., doing business as MGM Mirage;  
10 Turnberry/Harmon Ave., LLC; Turnberry Associates; and Does 1 through 100,  
11 Inclusive," Case No. A557730, filed in the Eighth Judicial District Court for the  
12 State of Nevada in and for the County of Clark, to this Court. The grounds for  
13 removal are:

14 1. Plaintiffs Mary Ann Sussex, Mitchell Pae, Malcolm Nicholl,  
15 Sandy Scalise, Ernesto Valdez, Sr., Ernesto Valdez, Jr., John Hanson, and  
16 Elizabeth Hanson ("Plaintiffs") filed a First Amended Class Action Complaint  
17 ("CA Compl.") on behalf of "hundreds of Class Members." CA Compl., Exhibit A  
18 hereto, ¶ 33.<sup>1</sup> Plaintiffs allege they were fraudulently induced into purchasing  
19 the "air rights" to condominium-hotel room units "as investment securities at the  
20 Signature," *id.*, ¶ 1, a high-rise condominium hotel located on the MGM Grand  
21 Hotel Casino property. There are over 1700 hotel condominium units at  
22 Signature. Plaintiffs seek, *inter alia*, damages, rescission of the purchase and sale  
23 agreements they signed and restitution of the "consideration paid" they paid for  
24 the hotel-condominium units, including "all expenses incurred, costs, and  
25 reasonable attorneys fees." *Id.*, at 32.

26  
27  
28 <sup>1</sup> Defendants have not been served with any other class action complaints.  
Plaintiffs' original complaint was not filed as a class action. See Exhibit E.

2. This Court has original jurisdiction over this alleged class action under 28 U.S.C. § 1332(d), the Class Action Fairness Act of 2005 ("CAFA"), because: (a) the number of plaintiffs in the putative class is more than 100; (b) the matter in controversy exceeds \$5,000,000; (c) there is minimal diversity between Plaintiffs and Defendants; and (d) none of the Defendants are States, State officials, or governmental entities. *Serano v. 180 Connect, Inc.*, 478 F.3d 1018, 1021 (9th Cir. 2007).

a. At least one plaintiff is diverse from one defendant, as required under 28 U.S.C. § 1332(d)(2)(A). For example, plaintiffs allege that Malcom J. Nichol and Sandy Scalise are citizens of California, and that plaintiff Mitchell Pae is a resident of Virginia. CA Compl., ¶¶ 16-17. Defendant Turnberry/MGM Grand Towers, LLC is a Nevada corporation with its principal place of business in Nevada.<sup>2</sup>

b. Plaintiffs estimate that there are "hundreds of Class members, geographically spread out throughout the United States. . ." *Id.*, ¶ 34 (a). The proposed class consists of Plaintiffs and all individuals who purchased one or more of the hotel condominium units in the Signature project. *See id.*, ¶ 33. Plaintiffs seek to certify a class under Nevada Rule of Civil Procedure 23, which is the state equivalent of Federal Rule of Civil Procedure 23.<sup>3</sup>

c. The matter in controversy well exceeds the value of \$5,000,000 because the estimated hundreds of Class Plaintiffs seek damages "in excess of \$50,000 *per plaintiff*." CA Compl., at 2 (Caption) (emphasis added). Plaintiffs seek to recoup the purchase price of their condominium units — each ranging between \$400,000 and \$900,000 — plus any expenses paid as a result of ownership, less any income received by Plaintiffs who currently own the

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<sup>2</sup> MGM Grand, Inc. and Turnberry Associates are not entities under the laws of the state of Nevada or any other state.

<sup>3</sup> Defendants do not acknowledge that Plaintiffs have properly pled a class action complaint or that the action is properly maintained as a class action.

1 property. *Id.*, ¶ 41. In addition, Plaintiffs seek civil penalties under NRS 90.640  
2 "of not more than \$2,500 for a single violation or \$100,000 for multiple violations,  
3 *id.*, ¶¶ 41-43, and punitive damages, *id.*, ¶ 68.

4 d. The class members who are citizens of Nevada do not  
5 equal or exceed 2/3 of all putative class members.

6 3. This Court has jurisdiction over this action under 28 U.S.C. §§  
7 1332(d), 1453(b), 1441(a), and 1446.

8 4. Venue is appropriate in the unofficial Southern Division of  
9 this Court under 28 U.S.C. §§ 1391(b), 1441(a), and 1446(a), and LR IA 6-1. This  
10 action was originally filed in the Eighth Judicial District Court for the State of  
11 Nevada, Clark County.

12 5. Defendants were served with a copy of the complaint on May,  
13 14, 2008. *See* Exhibits B, C, and D hereto. This Notice is therefore timely filed  
14 within thirty days of service, as required by 28 U.S.C. §§ 1446(b).

15 6. Turnberry/MGM removes this action under 28 U.S.C. §  
16 1453(b), which provides that class actions may be removed by any defendant,  
17 without the consent of all other defendants, and irrespective of whether any  
18 defendant is a citizen of Nevada.

19 7. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings  
20 and orders served on Defendants are attached hereto as follows:

- 21 a. First Amended Class Action Complaint, attached hereto
- 22 at Exhibit A;
- 23 b. Summons Turnberry/MGM Grand Towers, LLC,
- 24 attached hereto as Exhibit B;
- 25 c. Summons Turnberry/Harmon Ave., LLC, attached
- 26 hereto as Exhibit C;
- 27 d. Summons MGM Mirage, attached hereto as Exhibit D.
- 28 e. Complaint, attached hereto as Exhibit E;

- 1 f. First Amendment to Complaint to Substitute True  
2 Names for Fictitious Names, attached hereto as Exhibit  
3 F;  
4 g. Summons Turnberry Associates, attached hereto as  
5 Exhibit G; and  
6 h. Motion to Stay, attached hereto as Exhibit H.  
7 8. Concurrently with filing this notice, a copy of this Notice is  
8 being filed with the clerk of the Eighth Judicial District Court and served on  
9 Plaintiffs' counsel pursuant to 28 U.S.C. § 1446(d).

10 MORRIS PICKERING & PETERSON

11  
12  
13 By: 

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20 Attorneys for Defendants Turnberry/MGM  
21 Grand Towers, LLC, MGM Grand, Inc.,  
22 Turnberry/Harmon Ave, LLC and  
23 Turnberry Associates  
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25  
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CERTIFICATE OF SERVICE

Pursuant to Fed. R. Civ. P. 5(b) and Section IV of District of Nevada Electronic Filing Procedures, I certify that I am an employee of MORRIS PICKERING & PETERSON, and that the following documents were served via electronic service: NOTICE OF REMOVAL

TO:

N/A

I further certify that I am familiar with the firm's practice of collection and processing documents for mailing; that in accordance therewith, I caused the above-named document to be deposited with the U.S. Postal Service at Las Vegas, Nevada, in a sealed envelope, with first class postage prepaid, on the date and to the addressee(s) shown below:

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Attorney for Plaintiffs

DATED this 13th day of June, 2008.

By   
MORRIS PICKERING & PETERSON